

### **REMARKS**

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. 116, are respectfully requested in light of the following remarks.

### **STATUS OF CLAIMS**

The status of the claims was incorrectly indicated in the January 24, 2008 Office Action. Claims 1-48 were not pending at that time because, specifically, Claims 1 and 17 had been cancelled in the previous amendment; thus, Claims 2-16 and 18-48 were pending at the time of the January 24, 2008 Office Action. Moreover, the January 24, 2008 Office Action indicates that Claims 1-17 (actually 2-16), 22-30, 33-44, 46 and 47 are withdrawn from consideration. However, applicants previously amended these withdrawn claims to depend directly or indirectly from Claim 18, which is the generic claim being examined on the merits. It is believed that Claims 2-16, 22-30, 33-44, 46 and 47, which contained all of the limitations of Claim 18, should have been rejoined and examined in the January 24, 2008 Office Action. Correction (or explanation as to why correction is not deemed necessary) would be greatly appreciated.

By the foregoing amendment, applicants have again amended the claims and Claims 2-16, 18-43 and 56 are now in this application. Claim 18 remains the only independent claim and is now drawn to a cosmetic lip makeup composition. Thus, all claims are now drawn to a cosmetic lip makeup composition. New Claim 56 is drawn to a particular cosmetic lip makeup composition formulated as a liquid lip gloss or as a lipstick. Support for this language can be found at least in paragraphs

**[00155]** and **[00161]** to **[00167]** of the as-filed specification. It is therefore clear that no new matter has been added. Moreover, for reasons expressed above with respect to the previously withdrawn claims, it is believed that all claims now in the application are appropriate for examination on the merits and that any previously withdrawn claims should be rejoined and examined on the merits.

### **SUMMARY OF THE CLAIMED INVENTION**

The claims are now directed to a goniochromatic/light reflecting lip makeup composition comprising (a) at least one goniochromatic coloring agent suited for creating a goniochromatic colored background and (b) an amount of light reflective particles suited for creating highlight points that are visible to the naked eye, wherein said reflective particles comprise particles of a natural or synthetic substrate at least partially coated with a layer of at least one metal, said at least one metal comprising Ag, Au, Cu, Al, Zn, Ni, Mo or Cr, or mixture or alloy thereof, formulated into (c) a topically applicable, physiologically acceptable medium therefor. This composition provides a volumizing effect to the lips.

As indicated in the specification (paragraph **[0010]**, **[0012]**, the goniochromatic coloring agent makes it possible to observe a color change and the reflective particles can cloud the visual perception of the curvature of the lip make-up support as clearly illustrated by the examples of the present invention. See in particular, paragraphs **[00161]** to **[00167]** of the specification.

### **DOUBLE PATENTING REJECTION**

Claims 18-21, 31, 32 and 45 have been provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 3, 5, 10, 11, 31, 32 and 45 of copending Appln No. 10/622,480. Some of these claims are no longer pending in Appln. No. 10/622,480. Nevertheless, applicants are filing herewith an appropriate terminal disclaimer to obviate this rejection. The filing of the terminal disclaimer is not to be construed as acquiescence to the Examiner's position as it is undertaken merely to expedite prosecution of the present application. In view of the filing of the terminal disclaimer, withdrawal of the obviousness-type double patenting rejection is believed to be in order and is earnestly solicited.

### **CLAIM REJECTIONS - 35 U.S.C. § 103**

Claims 18-21, 31, 32 and 45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ramin et al. U.S. 6,491,932 in view of Grimm et al. US 2002/0064509 A1 for reasons of record. Applicants submit that all of the claims as amended hereinabove are free of the record rejection.

The Ramin et al. patent is especially directed to nail varnish compositions and more particularly is concerned with improving the aesthetic properties of such compositions, *i.e.*, for example, by imparting to them a glossy and/or sparkling metallic appearance (Examples 1 and 2) and good wear resistance (col. 1, lines 39-43). To this end, Ramin et al. provide compositions comprising reflective particles and optionally a film-forming polymer (col. 2, lines 43-47). Consequently, the effect of the compositions according to Ramin et al. is different from the effect of the

instantly claimed invention, which is, as described above, to impart a volumizing effect to the lips.

Furthermore, it is to be noted that for obvious reasons, namely toxicity reasons, what applies to lip compositions does not automatically apply to nail varnish compositions. Thus, a person skilled in the art would have probably never considered this document when searching for improving the aesthetic effect of lip compositions, namely for imparting to the lips a volumizing effect.

Moreover, the Ramin et al. patent is totally silent about combining its coated particles with a goniochromatic coloring agent. Instead, Ramin et al. rather suggest to a person of ordinary skill in the art to use at least one film-forming polymer therein (US '932, col. 2, lines 43-47) in order to improve wear resistance, as stated above. Consequently, in view of Ramin et al., a person of ordinary skill in the art would have never been motivated to specifically combine at least one goniochromatic coloring agent and an amount of light reflective particles suited for creating highlight points that are visible to the naked eye according to the invention.

The Grimm et al. published application describes cosmetic compositions comprising a goniochromatic coloring agent, but which are totally deprived of reflective particles, in contrast to the present invention. Grimm et al. report that such a goniochromatic coloring agent may be, for example, optionally combined with nacres (paragraph **[0033]**).

The reflective particles suitable for the present invention are structurally defined in terms of core and/or layer, and functionally defined as being suitable for creating highlight points that are visible to the naked eye and, that do not interfere with the goniochromatic effect of the coloring goniochromatic agent (paragraphs

**[0011]**, **[0020]**, **[0021]**, **[0037]**. Moreover, as indicated in the present application as filed (see paragraphs **[0056]** and **[0057]** of the present application as filed), nacres such as FLAMENCO® are not suitable as reflective particles according to the present invention. This clearly shows that any sorts of coloring agents are not automatically suitable in order to create highlight points that are visible to the naked eye and thus to achieve the present invention.

To conclude, the references cited by the Examiner may be considered as teaching either some goniochromatic coloring agents or some reflective particles. However, neither of these documents delivers a teaching that would have urged the man ordinarily skilled in the art to combine this uniquely taught element with the additional missing part of a composition of the invention. Moreover, neither of these documents offers the advantages in term of volumizing effect such a combination according to the invention provides.

Therefore, the man ordinarily skilled in the art could not have formed in these documents taken alone or in combination, the incentive to make the specific combination of a goniochromatic coloring agent with reflective particles in order to prepare a composition in accordance with the invention. As a consequence, the present claims have to be considered as non-obvious over the teaching of the cited prior art documents.

#### **OTHER MATTERS**

The acknowledgment of the claim for Convention priority and the certified copy of the priority document are noted, with appreciation.

Applicants also thank the Examiner for considering the Information Disclosure Statement filed November 2, 2007, and for returning an initialed copy of applicants' Form PTO-1449 to the undersigned.

### CONCLUSION

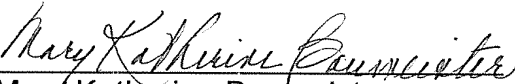
In view of the foregoing, further, favorable action in the form of a Notice of Allowance is believed to be next in order and is earnestly solicited.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: May 27, 2008

By:

  
Mary Katherine Baumeister

Registration No. 26254

P.O. Box 1404  
Alexandria, VA 22313-1404  
703 836 6620